BEFORE THE LAND USE COMMISSION
STATE OF HAWAI`I

In The Matter Of The Petition Of	)	DOCKET NO. A13-797
	)	
KAPA`A HIGHLANDS PHASE II; 3 STOOGES, LLC	)	ORDER (1) ALLOWING SUBSTITUTION OF HG KAUA`I JOINT VENTURE, LLC AS PETITIONER OF RECORD; (2) DETERMINING THAT THE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAI`I REVISED STATUTES; AND (3) THAT THE PROPOSED ACTION MAY HAVE A SIGNIFICANT IMPACT UPON THE ENVIRONMENT TO WARRANT PROCEEDING DIRECTLY TO THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT
To Amend The Agricultural Land Use District Boundary Into The Urban Land Use District For Approximately 97 Acres Of Land At Kapa`a, Island of Kaua`i, State Of Hawai`i, Tax Map Key No. (4) 4-3-03: Portion 001	)	AND
	)	CERTFICATE OF SERVICE
	)	

ORDER (1) ALLOWING SUBSTITUTION OF HG KAUA`I JOINT VENTURE, LLC AS PETITIONER OF RECORD; (2) DETERMINING THAT THE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAI`I REVISED STATUTES; AND (3) THAT THE PROPOSED ACTION MAY HAVE A SIGNIFICANT IMPACT UPON THE ENVIRONMENT TO WARRANT PROCEEDING DIRECTLY TO THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT

AND

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE STATE LAND USE COMMISSION, HONOLULU, HAWAI`I.

Date December 11, 2014

BY _____
Executive Officer

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI`I

In The Matter Of The Petition Of	)	DOCKET NO. A11-791
	)	
KAPA`A HIGHLANDS PHASE II; 3 STOOGES, LLC	)	ORDER (1) ALLOWING SUBSTITUTION OF HG KAUA`I JOINT VENTURE, LLC AS PETITIONER OF RECORD; (2) DETERMINING THAT THE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAI`I REVISED STATUTES; AND (3) THAT THE PROPOSED ACTION MAY HAVE A SIGNIFICANT IMPACT UPON THE ENVIRONMENT TO WARRANT PROCEEDING DIRECTLY TO THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT
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On March 21, 2011, 3 Stooges, LLC ("Petitioner"), filed a Petition For Land Use District Boundary Amendment ("Petition") to reclassify approximately 97 acres of land at Kapa`a, Island of Kaua`i, State of Hawai`i, identified as Tax Map Key No. (4) 4-3-03: por. 001, from the State Land Use Agricultural District to the State Land Use Urban District for the Kapa`a Highlands Phase II ("Project"). Petitioner included an environmental report within its Petition that the LUC determined to be inadequate [1] and identified that the use of State and county lands triggered compliance with Chapter 343, Hawai`i Revised Statutes (HRS). HG Kaua`i

[1] On April 27, 2011, the LUC sent Petitioner a letter deeming the Petitioner defective for failure to meet the content requirements in Section 15-15-50, Hawai`i Administrative Rules (HAR) and Chapter 343, HRS.

Joint Venture, LLC filed a motion with the Commission on October 29, 2014, requesting: the substitution of the original Petitioner with themselves as successor in interest; determining that the Commission was the appropriate approving agency for an Environmental Impact Statement (EIS); and, that the applicant go directly to the preparation of an EIS.[2]

The Project name has changed from Kapa`a Highlands Phase II to HoKua Place. The Project is subject to the environmental review process, pursuant to Section 343-5(a)(1), HRS and Section 11-200-6(b)(1)(A), Hawai`i Administrative Rules (HAR), as it proposes to use State and County lands in the development of water, wastewater, and roadway construction.

On November 25, 2014, the State Office of Planning ("OP") filed a Statement of No Objection to HG Kaua`i Joint Venture, LLC's Motion to Substitute Petitioner, Designate the Land Use Commission as Approving Agency for Environmental Impact Statement and Appearance of Counsel for Petitioner.

On December 9, 2014, the County of Kaua`i filed a Statement of No Position on HG Kaua`i Joint Venture, LLC's motion.

On December 10, 2014, the Land Use Commission ("Commission") met in Līhu`e, Kaua`i, Hawai`i, to consider the motion to determine (i) whether to substitute HG Kaua`i Joint Venture, LLC as Petitioner; (ii) whether the Commission should be the accepting authority pursuant to chapter 343, HRS; and, (iii) whether the Project may have a significant effect upon the environment to warrant the preparation of an EIS. William Yuen, Esq., Melissa Uhl, Esq., and Greg Allen appeared on behalf of HG Kaua`i Joint Venture, LLC. Also present were Bryan C. Yee, Esq., Leo Asuncion, and Rodney Funakoshi on behalf of OP. The County of Kaua`i ("County") Planning Director, Michael Dahilig, previously informed the Commission staff by fax that the County had no position on the motion and could not attend the meeting and, in fact, was not present or represented.

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[2] HG Kaua`i Joint Venture, LLC's motion acknowledged that the Project may have a significant effect upon the environment, and therefore will require the preparation of an Environmental Impact Statement ("EIS"). Amendments to Section 343-5, HRS, allow an approving agency to determine "...through its judgment and experience..." that an EIS is warranted and direct an applicant to go directly to preparing and EIS Preparation Notice (EISPN) rather than an Environmental Assessment (Act 172, SLH2012).

At the meeting, there was no public testimony. Proposed successor Petitioner provided a summary of their motion and explained that successor Petitioner – HG Kaua`i Joint Venture, LLC had acquired the Property from 3 Stooges, LLC. The movant noted that this Commission is the appropriate accepting authority for the EIS as the filing of the Petition represented the earliest practicable time to determine whether an EIS is warranted.

OP had no objections to this Commission substituting HG Kaua`i Joint Venture, LLC as the Petitioner, serving as the accepting authority for the EIS, and directing the preparation of an EIS for the Project.

Following discussion, a motion was made and seconded to:

1. allow the substitution of HG Kaua`i Joint Venture, LLC as the Petitioner of record, for good cause shown;
2. identify the Land Use Commission as the "approving agency" to process and review applicant's proposed actions pursuant to Chapter 343, HRS, as the Petition to amend land use district boundaries represents the earliest practicable time to determine whether an environmental impact statement (EIS) shall be required; and,
3. direct the Petitioner to proceed directly to the preparation of an environmental impact statement preparation notice (EISPN) because the Commission has reviewed the Petition and based on its judgment and experience, informs the applicant that under section 343-5(e), HRS, the proposed action may have significant effects requiring the preparation of a full environmental impact statement. The proposed Project requires the use of State or county lands or funds (pursuant to section 343-5(a)(1), HRS) and may have a significant impact on the environment as it may (i) involve an irrevocable commitment or loss or destruction of any natural or cultural resource; (ii) substantially affect the economic or social welfare of the community or State; and, (iii) involve substantial secondary impacts, such as effects on public facilities.

There being a vote tally of 7 ayes, 0 nays, and 2 excused, the motion carried.

ORDER

This Commission, having duly considered Petitioner's pleadings and motion, the comments of the County and OP in this proceeding, and a motion having been made at its meeting on December 10, 2014, in Līhu`e, Kaua`i, Hawai`i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion,

HEREBY ORDERS the substitution of HG Kaua`i Joint Venture, LLC as the Petitioner of record;

IT IS FURTHER ORDERED that the Commission agrees to be the accepting authority pursuant to chapter 343, HRS, that the Project may have a significant effect upon the environment to warrant the preparation of an EIS, and that the Petitioner is directed to file an EISPN available for a 30-day public review and comment period pursuant to sections 343-5(c) and 343-5(e), HRS, and section 11-200-15(b), HAR.

ADOPTION OF ORDER

This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai`i, this ___11th___, day of December, 2014, per motion on December 10, 2014.

APPROVED AS TO FORM

Diane Luckson
Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAI`I

By _____
CHAD MCDONALD
Chairperson and Commissioner

Filed and effective on:

_____December 11_, 2014.

Certified by: _____
DANIEL ORODENKER
Executive Officer
State Land Use Commission

BEFORE THE LAND USE COMMISSION
STATE OF HAWAI`I

KAPA`A HIGHLANDS PHASE II; 3 STOOGES, LLC	)	DOCKET NO. A11-791
	)	CERTIFICATE OF SERVICE
To Amend The Agricultural Land Use District Boundary Into The Urban Land Use District For Approximately 97 Acres Of Land At Kapa`a, Island of Kaua`i, State Of Hawai`i, Tax Map Key No. (4) 4-3-03: Portion 001	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER (1) ALLOWING SUBSTITUTION OF HG KAUA`I JOINT VENTURE, LLC AS PETITIONER OF RECORD; (2) DETERMINING THAT THE LAND USE COMMISSION AGREES TO BE THE ACCEPTING AUTHORITY PURSUANT TO CHAPTER 343, HAWAI`I REVISED STATUTES; AND (3) THAT THE PROPOSED ACTION MAY HAVE A SIGNIFICANT IMPACT UPON THE ENVIRONMENT TO WARRANT PROCEEDING DIRECTLY TO THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

CERTIFIED MAIL:	WILLIAM W.L. YUEN, Esq. MELISSA M. UHL, Esq. Alston Hunt Floyd & Ing 1001 Bishop Street, Suite 1800 Honolulu, Hawai`i 96813 Attorneys for Petitioner – HG Kaua`i Joint Venture, LLC
DEL.:	LEO ASUNCION, Acting Director State Office of Planning P. O. Box 2359 Honolulu, Hawai`i 96804-2359
REGULAR MAIL:	BRYAN C. YEE, Esq. Deputy Attorney General 425 Queen Street Honolulu, Hawai`i 96813 Attorney for State Office of Planning
REGULAR MAIL:	IAN JUNG, Esq. County of Kaua`i, Department of the Corporation Counsel 4444 Rice Street, Suite 220 Līhu`e, Kaua`i 96766 Attorney for the County of Kaua`i
REGULAR MAIL:	MICHAEL A. DAHILIG, Director County of Kaua`I, Department of Planning 4444 Rice Street, Suite A473 Līhu`e, Kaua`i 96766
REGULAR MAIL:	LIKO`OLANI MARTIN P.O. Box 564 Anahola, Hawai`i 96703
REGULAR MAIL	SIERRA CLUB, KAUA`I GROUP OF THE HAWAI`I CHAPTER P.O. Box 3412 Līhu`e, Kaua`i 96766
REGULAR MAIL	WAILUA-KAPA`A NEIGHBORHOOD ASSOCIATION 340 `Āina Uka Street Kapa`a, Hawai`i 96746

Dated: Honolulu, Hawai`i, December 11, 2014

DANIEL ORODENKER
Executive Officer